



County of Fairfax, Virginia

MEMORANDUM

DATE: February 14, 2019
TO: Will Isenberg, Office of Watershed Programs & Office of Ecology, VA DEQ.
FROM: Martin Hurd, MS4 Program Specialist, Fairfax County, VA.
SUBJECT: SaMS Non-Traditional Best Management Practices Workgroup Action Item

Mr. Isenberg,

The purpose of this memo is to provide the response to the action item assigned during the Salt Tracking & Reporting Workgroup Meeting that was held on October 24, 2018. That action item was to “*Review available contracting tools and mechanisms and identify which work best for various scenarios.*”

I began by reviewing the Twin Cities *Metropolitan Area Chloride Management Plan* (February 2016), which recommended visiting the Snow & Ice Management Association (SIMA) website for contract templates that do not charge by volume of salt. I obtained these templates as well as model contracts developed in Minnesota for the city of Edina, MN. What follows is a review of each of the two contract templates as well as a section that summarizes the material and proposes next steps.

SIMA Contract Templates

The SIMA contract templates are arranged in three parts, Scope, Terms & Conditions, and Pricing Scenarios (per season, per visit, per event, etc.). The Scope defines the area of interest, level of service, insurance requirements, and special considerations, such as customer confirmation when clarifications are required. The Terms and Conditions contains basic contract language and is not specific to deicer materials or their application. Information on three separate options for contract pricing scenarios is presented below:

1. Per Season

Key elements of this scenario are the language that includes or defines:

- start and end dates of the season,
- payment amount and schedule,
- total snowfall & number of major ice events expected and covered for the season,
- payment amounts for events that exceed contract expectations,
- services not included in contract (additional cost items), and
- acknowledgement that extreme weather conditions may warrant cost adjustments

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2. Per Event

The pricing breakdown uses five “trigger depths” of three inch intervals, the highest interval up to fifteen inches, each with an associated cost. Additional cost per inch over 15 inches is also identified. In some cases, language may define special events, such as:

- Deep Snow (over 10”)
- Ice Storms,
- Fast Accumulating Snow, and
- Wet Heavy Snow, which may require special equipment or techniques that incur additional cost

3. Per Visit

The contract defines a visit, sets a price, and may identify additional services not included in a standard visit. Versions may include a “per plow” rate up to a 7” accumulation, and a price to clear walks once per day after 1-2” of snow accumulation.

Minnesota Template (city of Edina)

The City of Edina retained consulting and legal services to form and facilitate an advisory committee and provide legal counsel to create a model contract for snow removal services.

The model contract requires the contractor to use best practices to limit the movement of chlorides, nutrients, and sand/sediments into public stormwater systems and surface waters. The language is designed to protect both contractor and property owner from legal risk in the event of an injury or accident that is claimed to be the result of elevating environmental and materials protection over safety.

Although the model contract contains fourteen sections, this review excludes standard contract language sections and briefly describes those specific to snow removal.

1. Description of Services

The section acknowledges contractor will exercise good judgement while stating adverse environmental effects of deicing materials. It also references the use of best practices without compromising safety, level of service, or effectiveness.

2. Snow Removal

This section specifies trigger depth(s), plowing and shoveling requirements, and constraints associated with blizzards, heavy snow, and wind.

3. Use of Best Practices

This section contains details and expectations of practices designed to limit environmental impact and vegetation/structural damage. The content is subdivided into the following sections:

- a. BMP List
- b. Training & Certification
- c. Documentation & Calibration
- d. Owner Site Management Obligations, and
- e. Communications

4. Duty of Care, Indemnification, and Insurance Requirements

Responsibilities of owner and contractor are clarified with respect to claims, liabilities, damages, costs, and insurance requirements.

Contract Template Review Summary and Next Steps

The two contract templates share the following common elements:

- clearly defined season and contract duration
- fixed price approach (instead of time and materials),
- clearly defined treatment area,
- clearly defined roles and responsibilities of site owner and contractor,
- expected level of service, with well-defined triggers that initiate service,
- expected number and types of events, with language (and pricing) for extreme events or greater than expected number of events.

The Minnesota contract language differs from the SIMA materials by referencing and depending upon state-specific training & certification programs, assessment tools, maintenance manuals, field handbooks, and BMP checklists. References to these artifacts in the contract language is critical if the purpose of restructuring snow removal contracts is to achieve the desired level of service while reducing reliance on deicers. These elements also provide a foundation for the “duty of care” language that affords protections to contractors and site owners by documenting that proper care and consideration have been given to public safety, as well as pollutant and public infrastructure impacts by adhering to SaMS recommended best practices.

The SaMS currently in development should give consideration to the development of similar training & certification programs in Virginia (or the Washington Metropolitan Region), which would provide both public and private stakeholders with the ability to restructure contracts as a strategy to adopt in order to reduce deicer use. DEQ might also consider including a contract template specific to this region as a part of the SaMS.

Any contract templates developed as part of the SaMS could then be included in the public education and outreach materials that target commercial property managers and contracted snow removal services.